

Qu # 131

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
30 July 1948

UNITED STATES OF AMERICA VS HIROYUKI MORITA

Review of the Staff Judge Advocate

1. The attached record of trial of Hiroyuki Morita at Yokohama, Japan, from 30 June 1947 to 3 July 1947, by a Military Commission appointed by paragraph 15, Special Orders No. 145, Headquarters Eighth Army, United States Army, dated 23 June 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Hiroyuki Morita	DATE OF CONFINEMENT: 11 June 1946
AGE: 27	DATE OF ARRAIGNMENT: 30 June 1947
RESIDENCE: Hyogo-ken, Kobe-shi, Suma-ku, Ote-cho, 5-Chome	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 30 June 1947 to 3 July 1947
RELATIVES: Wife, father, mother, 3 sisters	DATE OF SENTENCE: 3 July 1947
EDUCATION: Graduate Kobe Commercial School, 11 yrs of schooling	SENTENCE: CHL for fifteen (15) yrs
VOCATION: Clerk at commercial company	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Drafted into Japanese Army 10 Apr 1941, no overseas service, assigned to Osaka POW Camp 21 Sep 1942, to Kobe Branch POW Camp 5 Oct 1942	

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Ch: Accused, at the times and places NG set forth in the specifications, and during a time of war between the United States and Japan, did violate the Laws and Customs of War.		G	Yes
Sp 1: On numerous occasions, in or about January 1944, at Kobe Branch POW Camp, Osaka Area, Honshu, Japan, accused did willfully and unlawfully mistreat and abuse Corporal James Mowat, Private George Munro and Private Jack Kenneth Ramsbottom, Australian PWs, by beating them and causing them to stand at attention for excessively long periods of time.	NG	NG	---
Sp 2: Between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully	NG	G	Yes

mistreat and abuse Lieutenant John R. Fuller, an Australian PW, by beating him.

Sp 3: Between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully mistreat and abuse Private Jens Hanson and approximately twenty other Australian PWs by beating them with a club and causing them to stand for a long period of time with their hands extended above their heads. NG G Yes

Sp 4: Between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully mistreat and torture Corporal Charles Cupples, Private Raymond E. Horne, Private Albert M. Armstrong, and numerous other Australian PWs by beating and otherwise abusing them. NG NG ---

Sp 5: On numerous occasions between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully mistreat, torture and abuse Gunner Alexander Myles Croft, an Australian PW, by beating him with leather and rubber boots and causing him to stand at attention in winter weather without adequate clothing for long periods of time. NG G Yes

Sp 6: Between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully mistreat Arthur Doyle Brown, an Australian PW, by beating him. NG NG ---

Sp 7: Between 1 October 1943 and 5 June 1945, at Kobe Branch POW Camp, accused did willfully and unlawfully mistreat and abuse numerous Allied PWs by beating them with sticks, clubs, boots and fists and by otherwise torturing them. NG G Yes

Sp 8: In or about June 1945, at Kawasaki Branch POW Camp, Osaka Area, Honshu, Japan, accused did willfully and unlawfully mistreat, torture and abuse Sergeant Walter Alfred Stringer and Signalman Bruce Sheriff, Australian PWs, by beating them with clubs and a sword, by kicking them, and by suspending them from a tree by their arms. NG G Yes

Sp 9: Between 5 June 1945 and 20 June 1945, at Kawasaki Branch POW Camp, accused did willfully and unlawfully mistreat numerous Allied PWs by beating and otherwise abusing them. NG Nolle Prosequi ---

3. Summary of the Evidence:

a. For the Prosecution:

The accused was properly identified by one witness appearing before the Commission and by affidavits of six former prisoners of war who identified the accused from a photograph submitted to them at the time of making their affidavits (R. 4; Ex. 18, 19, 20, 21, 23, 36). Some of the affidavits refer to the accused by the names of Marita, Morita, Moreta, and Mureta. Nevertheless, from the reference in the affidavits, they indicated and described the various offenses for which the accused was convicted and properly identify him as the person who inflicted the punishment upon the prisoners of war.

As to Specification 1: Not Guilty.

As to Specification 2: Between 1 October 1943 and 5 June 1945 the accused beat PW Fuller with a rubber slipper and forced him to stand at attention for several hours (Ex. 2, 3, 4).

As to Specification 3: Between 1 October 1943 and 5 June 1945, PW Hanson and twenty other PWs were severely beaten and struck over the back and head with a club by the accused and then forced to stand with their hands over their heads for a long period of time (Ex. 5).

As to Specification 4: Not Guilty.

As to Specification 5: Between the dates of 1 October 1943 and 5 June 1945 the accused severely beat and struck PW Croft about the face and head for about twenty minutes using a leather slipper and rubber shoe and hitting him with his fists. The PW was knocked to the ground and accused kicked him in the legs and groin and then forced the PW to stand at attention all night in cold weather without an overcoat (Ex. 3, 7; R. 6).

As to Specification 6: Not Guilty.

As to Specification 7: Between the dates of 1 October 1943 and 5 June 1945 the accused on numerous occasions severely beat and struck numerous prisoners of war with sticks, clubs, boots, and fists (R. 7, 8, 9, 10; Ex. 2, 3, 8, 9, 10, 13, 14, 15, 16, 17, 35).

As to Specification 8: In or about June 1945 the accused severely beat and struck PW Stringer and PW Sheriff with his fists, a club, and a sword and then suspended the two PWs by their hands from a tree (Ex. 4, 12, 17, 22, 24, 25, 27, 28, 29, 30, 31, 32, 33, 37).

As to Specification 9: Nolle Prosequi.

b. For the Defense:

The accused, after being informed of his rights by his counsel, was sworn as a witness and testified in his own behalf (R. 2, 44).

The accused admitted slapping Lieutenant Fuller with his open hand two or three times for having a PW bring oil into the camp, which was in violation of the camp rules (R. 45)(Sp 2).

Accused recalled the incident concerning the twenty PWs whom he punished by making them raise their hands over their heads and then striking them on the buttocks with a stick (R. 45)(Sp 3). The accused testified that he did not recall PW Croft or remember that he punched him, but that he did punch a PW several times for bringing food into camp and ordered him to stand at attention for a short period of time, but that he did not force him to stand for a period of nine hours (R. 45, 46)(Sp 5). Accused testified that he always punished PWs who stole food (Sp 7). Accused testified that he at no time punished PW Stringer or PW Sheriff as charged; although he had heard about the punishment, he in no way participated (R. 46)(Sp 8). None of the PWs whom he punished ever suffered injury sufficient to cause them to need medical aid (R. 46). The accused testified that he never participated in any other offenses alleged against him (R. 46) and that he arranged with the company for whom the PWs worked to enlarge their food ration. He helped organize the PWs so they could put on shows and furnished other entertainment for their benefit (R. 48, 49). Accused testified that the "Pay Sergeant" referred to in the affidavits and himself were not on friendly terms (R. 50, 51). The accused testified that he thought he was doing the right thing in punishing the prisoners of war as he did and that it was the best way to handle them for the offenses they committed in violation of camp rules (R. 51).

4. Errors and Irregularities:

a. There are no errors or irregularities appearing in the record of trial which injuriously affect any substantial rights of the accused. The record of trial discloses that the trial was held without partiality and adequate opportunity was given to the accused to present any matters in his individual defense that he might desire. The accused was ably represented by Japanese and American counsel, and he fully cooperated in his defense. There is no evidence that the accused was insane or otherwise incompetent at the time of the trial or at the time of the alleged offenses. Insanity was not an issue.

b. The defense has filed a motion and brief herein asking the Reviewing Authority to set aside, reduce, or modify the sentence imposed. The defense contends that the sentence is excessive and therefore asks that the Reviewing Authority modify the same so that the accused will receive a just and reasonable sentence commensurate with the degree of his guilt. The reviewer is advised that the prosecution has indicated that it will not file a reply brief in this case (Major Goodman).

c. There have been no questions raised in the record that were not decided by the Commission upon hearing the evidence presented. Two-thirds of the members of the Commission present at the time the findings were arrived at and the sentence imposed concurred in the result.

d. The various objections and motions made during the trial; the errors and irregularities appearing in the record of trial, and the alleged errors called to the attention of the Reviewing Authority in the defense brief have heretofore been passed upon in numerous reviews of this Headquarters. The defense objected to the jurisdiction of the Commission, the admission of affidavits offered by the prosecution and admitted by the Commission, that the specifications did not allege offenses, and that the sentence was excessive. All of the above objections have, as stated above, been passed upon in the reviews hereinafter cited. In view of these former holdings, the alleged errors

complained of by the defense (R. 3, 19, 20, 44) can not be considered prejudicial to the rights of the accused (Case Docket No. 55, Murakami et al; No. 39, Hirata; No. 68, Narikawa; No. 156, Nishida; No. 99, Sano et al). The contentions as set out in the defense brief and motion are in effect academic and without merit and need not be discussed in this review.

5. Opinion:

a. The record is legally sufficient to sustain the findings and sentence imposed by the Commission as to the accused.

b. The charge and specifications herein against the accused allege violations of the Laws and Customs of War, committed by the accused, who was an enemy national, against members of the United States Armed Forces, and its Allies, at a time when a state of war existed between the United States, and its Allies, and Japan. Accordingly, the Commission which was appointed to hear the case had jurisdiction of the accused and of the subject matter under SCAP Regulations (File AG 000.5 (5 Dec 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals" and amendments thereto) as established by the Supreme Commander for the Allied Powers. The Commission was constituted by proper authority and had jurisdiction of both the accused and of the offenses (Case Docket No. 55, Murakami et al).

c. The prosecution introduced evidence by means of one former prisoner of war who personally appeared before the Commission and testified and the introduction of thirty-six affidavits of former prisoners who had been interned in the camp and who were in a position to know the facts of the matters in issue. There is sufficient legal evidence in the record of trial, including the affidavits properly received in evidence by the Commission, which conclusively supports the findings of guilty of the accused herein for the offenses alleged and for which he was found guilty by the Commission. The charge and specifications against the accused are that he did in five proved instances beat, strike, and abuse prisoners of war. The brutal and severe results attending some of the beatings in this case compels the conclusion that the sentence is appropriate and that it is not excessive but is in line with those of others in like cases.

d. The Commission, as a trier of the facts, was in a position to judge the sufficiency of the evidence before it, and its findings, based upon the testimony of the one witness appearing before the Commission, together with the numerous affidavits of prisoners of war who were at the time the offenses were committed confined at the camp and personally knew the existing conditions, should not be disturbed on review.

6. Recommendations:

a. It is recommended that the motion of the accused to modify, set aside, or reduce the findings and sentence be denied.

b. There are numerous letters and petitions filed seeking clemency for the accused. After careful reading of the same, they do not suggest any newly discovered evidence on behalf of the accused. Had these letters and petitions been submitted and considered by the Commission they would not have justified any change in the findings or sentence. The letters and petitions do not disclose any mitigating circumstances or justification for the crimes committed by the accused. There was no letter of recommendation for clemency filed by the Commission.

c. The sentence imposed by the Commission against the accused is considered adequate for the crimes committed. Clemency is not merited. There are no mitigating circumstances or justification for the offenses committed.

d. The accused was sentenced to confinement at hard labor for fifteen (15) years. He was confined at Sugamo Prison on 11 June 1946.

e. It is recommended that the sentence be approved and, in compliance with the established policy, owing to the length of time accused has been in confinement prior to the date of sentence, that nine and one-half (9½) months of the confinement at hard labor imposed be remitted.

f. It is recommended that Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement of the accused.

7. Action:

Attached hereto is a form of action designed to carry into effect the above recommendations should they meet with your approval.

GEORGE R. TAYLOR
Reviewer
Judge Advocate Section

I concur in general. In view of the multiple beatings involved in Specification 3 and the facts involved in other incidents pleaded, such as those in Specification 2, the sentence of this, the camp's ranking non-commissioned officer, is believed to be justified. With regard to the asserted unusual acts of consideration and kindness (sic, Welford's letter, Hoblitt, etc.) performed by the accused in certain instances, it is believed that the sentence imposed indicates that the commission fully considered such matters and allowed for them to some extent in its sentence. Nevertheless, it is considered that additional clemency is justified. Remission of two years of his sentence is recommended.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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